THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.18568 of 1997

Dated: 07.3.2007

Between:

M.Manohar Kumar,
And another

… Petitioners

AND

Chairman and Managing Director,
Andhra Bank, Hdyerabad.

And others.

… Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.18568 of 1997

ORDER:

This writ petition is filed for a writ of mandamus to declare the action of respondents in not regularizing the services of the petitioner from the date of initial engagement as illegal and arbitrary and for a consequential direction to respondents to regularize the petitioners' services with all consequential benefits.

In the affidavit filed in support of the writ petition it is averred that the first petitioner had been working as temporary sub-staff on daily wage basis since May 1990 and the second petitioner was working as sub-staff since 16.3.1990. It is also stated that the first petitioner worked in Khairatabad branch for 235 days and was subsequently transferred to Somajiguda branch and both the petitioners who are working in Somajiguda branch have put in more than 240 days of service and working for the last several years. In para-6 of the affidavit it is stated that the respondent has evolved a scheme to absorb the temporary staff and however the case of the petitioners was not considered.

A counter affidavit has been filed wherein it is stated inter alia that the respondent bank has issued a circular bearing No.310 dated 18.10.1991 calling for applications from temporary employees who have worked for a minimum period of 90 days or more during 1.1.1982

and 31.12.1989 to draw panel of such temporary employees and that in terms of circular issued by the bank, applications were received from such temporary employees. After approval of the Directorate General of Employment & Training, New Delhi, such temporary employees have been empanelled and the services of such empanelled candidates are presently being utilized in leave vacancies on rotation. It is also further stated that in terms of approach paper issued by the Government of India, the Bank has issued circular letters advising the branches to utilize only the candidates in the panel for filling up the leave/temporary vacancies and also intimating that action would be taken for any violation. It is further submitted that the temporary appointments given to the petitioners, if any, by the branch concerned are in violation of the guidelines of the Bank; that Andhra Bank being a public sector bank no person can claim employment or regularization of service in violation of the rules. The claim of the petitioners that they worked for more than 240 days in 12 calendar months is also denied as in correct. In para-9 of the counter affidavit it is averred that as the service on temporary basis put in by the petitioners is beyond the cut off date prescribed i.e., 31.12.1989, they are not entitled for empanelment in terms of approach paper of the Government of India and also in terms of circular No.310 dated 18.10.1991 issued by the Bank.

Heard the learned counsel for both sides. During the course of arguments Dr.K.Laxminarsimha, learned counsel representing the respondent-Bank fairly stated that the averments contained in the counter affidavit relating to the eligibility for consideration were attributed to circular No.310 dated 18.10.1991 inadvertently, while the conditions mentioned in para-9 of the counter affidavit are actually incorporated in the settlement dated 9.1.1995, a copy of which was

filed along with the counter affidavit. From the material on record it is clear that the respondent initially issued circular No.310 dated 18.10.1991 providing for a scheme for empanelment/absorption of temporary employees and the eligibility criteria prescribed in the said circular is extracted as under:

> " 1. To draw panels of eligible persons who have worked in sub-staff cadre in our Bank on temporary basis for 90 days or more, subsequent to 1.1.1982.
>
> 2. The empanelment of the temporary sub staff shall be made at Central Office subject to their eligibility; suitability; clearance of Director General of Employment and training etc.
>
> 3. Initially, the candidates enlisted in the panel shall be considered for temporary appointments in leave vacancies and on rotation basis.
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> 4. Absorption of these temporary employees shall be made subject to availability of identified vacancies from time to time within the permissible staff growth level and the statutory requirements regarding reservations for SC/ST/Ex-SM/PH etc.
>
> 5. **ELIGIBILITY CRITERIA:** The candidates should have passed 6th class or equivalent and should not have passed 8th class. The age of the candidates must not be less than 18 years and not more than 25 years. The relaxation in upper age limit are allowed to the candidates belonging to reserved categories as per the rules in vogue."

However, the respondent entered into a memorandum of settlement arrived at under Section 12(3) of the Industrial Disputes Act 1947 before the Assistant Labour Commissioner on 9.1.1995 with All India Andhra Bank Award Employees Union, Hyderabad. Clause-I of the settlement prescribed the eligibility criteria which reads as under:

> " All those temporary candidates engaged by the Bank between 1.1.1982 and 31.12.1989 who have responded to the press notification of the bank dated 28.10.1991 and 31.10.1991 and Circular No.310 Ref.3/28 dated 18.10.1991 and who have put in a minimum 'service' of 90 days or more during the above period and whose names are cleared by

Directorate General of Employment & Training, Government of India, New Delhi, under approach paper, will be eligible for benefits under this settlement.

In the case of temporary candidates where litigation is pending as on the date of settlement, the condition that they should have worked only between 1.1.1982 and 31.12.1989 shall not be insisted upon, provided they agree to withdraw the Court cases and undertake to abide by the terms of this settlement."

From the aforementioned eligibility criteria it is clear that the temporary employees who worked between 1.1.1982 and 31.12.1989 and have responded to the press notification of the bank dated 28.10.1991 and 31.10.1991 and circular No.310 dated 18.10.1991, and have put in a minimum service of 90 days alone are eligible for consideration for absorption/regularization.

On the petitioners own showing they were first engaged on temporary basis after 31.12.1989. Therefore, they do not fall within the scheme framed in terms of settlement dated 9.1.1995.

For the aforementioned reasons, the petitioners are not entitled to any relief in this writ petition and accordingly the writ petition is dismissed. No order as to costs.

C.V.NAGARJUNA REDDY,J

Dt:07.3.2007
Mdaa.